

1 DANIEL E. LUNGREN, Attorney General
of the State of California
2 ANTONIO J. MERINO,
Deputy Attorney General, State Bar No. 64401
3 Department of Justice
300 South Spring Street
4 Los Angeles, California 90013
Telephone: (213) 897-2540
5 Attorneys for Complainant
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7
8 BEFORE THE
BOARD OF ACCOUNTANCY
9 DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

10 In the Matter of the Accusation) NO. AC-94-24
11 Against:)
12 MARVIN J. BARANOV) ACCUSATION
13 15720 Ventura Blvd., Suite 520)
Encino, CA 91436)
14 Public Accountant Certificate)
No. PA 6623)
15 Respondent.)

16 Complainant Carol B. Sigmann, as cause for disciplinary
17 action, alleges:

18 1. Complainant is the Executive Officer of the
19 California State Board of Accountancy ("Board") and makes and
20 files this accusation solely in her official capacity.

21 2. On or about August 30, 1946, Public Accountant
22 Certificate No. PA 6623 was issued by the Board to Marvin J.
23 Baranov ("respondent"), and at all times relevant herein, said
24 Public Accountant Certificate was, and currently is, in full
25 force and effect. Effective on September 11, 1963, in a case
26 entitled, "In the Matter of the Accusation Against: Marvin J.
27

1 Baranov," case no. LA 30, the Board determined that respondent
2 violated Business and Professions Code section 5100(d) and
3 revoked respondent's certificate, but stayed the revocation, and
4 placed respondent on probation for a period of three years,
5 including 180 days of suspension.

6 3. This accusation is made in reference to the
7 following statutes of the California Business and Professions
8 Code ("Code"):

9 a. At all times relevant herein, section 5100 has
10 provided, in part, that the Board may revoke, suspend or
11 refuse to renew any permit or certificate issued by the
12 Board, or may censure the holder of any such permit or
13 certificate for (c) Dishonesty, fraud, or gross negligence
14 in the practice of public accountancy; and (f) Willful
15 violation of any rule or regulation promulgated under the
16 authority of the Accountancy Act.

17 b. Section 5107 provides, in part, that the Board may
18 request the administrative law judge, as part of the
19 proposed decision in a disciplinary proceeding, to direct
20 any holder of a permit or certificate found in violation of
21 section 5100 (a), (b), (c), (h), (i) or (j), to pay to the
22 Board all reasonable costs of investigation and prosecution
23 of the case, including, but not limited to, attorney's fees.

24 4. This accusation is made in reference to the
25 following regulations of the California Code of Regulations
26 (formerly the California Administrative Code), title 16. (The
27 regulations of the Board are contained in Title 16 of the

1 California Code of Regulations and will be cited herein as "Rule
2 _____," with the specific number of the regulation set forth.)

3 a. At all times relevant herein, Rule 58.3 has
4 provided as follows:

5 "(a) This rule defines the compilation of
6 financial statements and the review of financial
7 statements of a non-public entity and provides guidance
8 to accountants concerning the standards and procedures
9 applicable to such engagements. The accountant is
10 required to issue a report conforming to professional
11 standards whenever he completes a compilation or review
12 of the financial statements of a non-public entity.
13 the accountant should not issue any report on the
14 unaudited financial statement of a non-public entity or
15 submit such financial statement to his client or others
16 unless he complies with such professional standards.

17 "(b) Compilation of financial statements is
18 the presentation in the form of financial statements of
19 information that is the representation of management
20 (owners) without undertaking to express any assurance
21 on the statements.

22 "(c) Review of financial statements is the
23 performance of inquiry and analytical procedures that
24 provide the accountant with a reasonable basis for
25 expressing limited assurance that there are not
26 material modifications that should be made to the
27 statements in order for them to be in conformity with

1 generally accepted accounting principles or, if
2 applicable, with another comprehensive basis of
3 accounting.

4 "(d) An accountant should not consent to the
5 use of his name in a document or written communication
6 containing unaudited financial statements of a non-
7 public entity unless (a) the accountant has compiled or
8 reviewed the financial statements and the accountant's
9 report accompanies them, or (b) the financial
10 statements are accompanied by an indication that the
11 accountant has not compiled or reviewed the financial
12 statement and that the accountant assumes no
13 responsibility for them."

14 b. At all times relevant herein, Rule 68 has provided
15 as follows:

16 "A licensee of the board, after demand by or
17 on behalf of a client, for books, records or other
18 data, whether in written or machine sensible form, that
19 are the client's records shall not retain such records.
20 Unpaid fees do not constitute justification for
21 retention of client records.

22 "Although in general the accountant's working
23 papers are the property of the licensee, if such
24 working papers include records which would ordinarily
25 constitute part of the client's books and records and
26 are not otherwise available to the client, then the
27 information on those working papers must be treated the

1 same as if it were part of the client's books and
2 records."

3 5. Respondent is subject to disciplinary action on
4 account of the following:

5 a. For the years 1985, 1986, 1987 and 1988,
6 respondent provided tax preparation services for J.D. Price,
7 Jr., (hereinafter "Price") and on behalf of his estate.
8 Price retired in June 1985. Pursuant to his employee
9 retirement benefits package, Price received payments after
10 his retirement from the State Teachers Retirement System
11 ("STRS") and the Public Employee Retirement System ("PERS").
12 Prior to his retirement, Price had made contributions to
13 each system.

14 b. For the years 1985, 1986 and 1987, respondent
15 included the payments received by Price from STRS and PERS
16 as taxable income.

17 c. On or about April 30, 1989, Price died. Alice
18 Cox (hereinafter "Cox"), his daughter, was named executrix
19 of his estate.

20 d. Respondent's inclusion of the payments from
21 STRS and PERS as taxable income for 1985, 1986 and 1987,
22 constitute gross negligence in violation of section 5100(c)
23 of the Code because said pension payments were exempt from
24 taxation as the taxpayer's contributions under Internal
25 Revenue Code section 72(d).

26 e. Approximately in March 1989, Cox had informed
27 respondent about the overpayment of taxes for 1985, 1986 and

1 1987. Respondent failed to timely submit a claim for a
2 refund for overpayment as authorized pursuant to Internal
3 Revenue Code section 6511. Respondent claimed additional
4 fees were due to him for work on behalf of the estate.
5 Thereafter Cox was unable to obtain any refunds for the
6 overpayments of approximately \$4000 because too much time
7 had elapsed. Respondent's failure to submit a claim for
8 refund or to exercise due diligence in such regard
9 constitutes gross negligence in violation of section 5100(c)
10 of the Code.

11 f. Immediately prior to March 1991, Cox
12 repeatedly requested copies of the 1988 tax returns and
13 other documents. Respondent did not provide them. On or
14 about March 5, 1991, Cox through her counsel submitted a
15 written request for the entire file of Price and/or of the
16 estate. Respondent refused to comply with the written
17 request because no written authorization from Cox was
18 included. Respondent's refusal and failure to provide
19 records to Cox or her counsel constitutes a willful
20 violation of Rule 68 and grounds for discipline under
21 section 5100(f) of the Code.

22 6. Respondent is subject to disciplinary action on
23 account of the following:

24 a. On or about February 25, 1993, pursuant to an
25 investigative hearing, respondent appeared before the
26 Administrative Committee of the Board. Respondent produced
27 samples of his work including a financial statement for a

1 client, "Ruzane, Inc.," for the period ending October 31,
2 1993, which consisted of a single page income statement, a
3 compilation report which referred to a balance sheet and the
4 related statements of income and expense. According to
5 respondent, the statement was prepared on a cash basis.

6 b. Respondent's conduct in the preparation of the
7 financial statements for Ruzane, Inc., constitutes gross
8 negligence in violation of section 5100(c) of the Code as
9 follows:

10 (1) Respondent's report refers to the accompanying
11 Balance Sheet of Ruzane, Inc. and the related
12 statements of income and expense when the only
13 statement accompanying the report is an income
14 statement of one page.

15 (2) The financial statements fail to include a
16 statement of cash flows, fail to include note
17 disclosures as required by generally accepted
18 accounting principles or in the alternative fail to
19 describe the absence of these disclosures.

20 (3) The report fails to disclose the basis of
21 accounting as being on the cash basis.

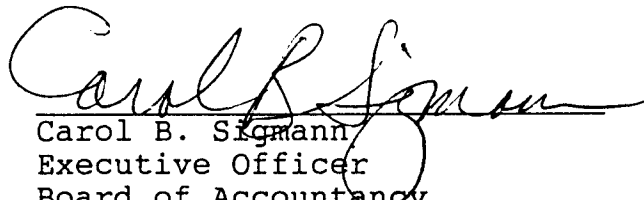
22 (c) Said failures also constitute a willful
23 violation of Rule 58.3 for failure to comply with
24 professional standards as set forth in the AICPA's
25 Statements on Standards for Accounting and Review Services
26 (SSARS) No. 1, AR § 100.05, AR § 100.21, and AR § 100.20 and
27 thereby grounds for discipline under section 5100(f) of the

1 Code.

2 WHEREFORE, complainant requests that the Board hold a
3 hearing on the matters alleged herein, and that following said
4 hearing, the Board issue a decision:

- 5 1. Revoking or suspending Public Accountant
6 Certificate Number PA 6623, heretofore issued to
7 respondent Marvin J. Baranov;
8 2. Directing respondent Marvin J. Baranov to pay to
9 the Board a reasonable sum for its investigative
10 and enforcement costs of this action; and
11 3. Taking such other and further action as the Board
12 deems appropriate to protect the public health,
13 safety and welfare.

14 DATED: August 16, 1994
15

16 
17 Carol B. Sigmann
18 Executive Officer
19 Board of Accountancy
20 Department of Consumer Affairs
21 State of California

22 Complainant
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9 **BOARD OF ACCOUNTANCY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation)	NO. AC-94-24
Against:)	
)	DEFAULT DECISION AND
12 MARVIN J. BARANOV)	ORDER
13 15720 Ventura Blvd., Suite 520)	
Encino, California 91436)	
)	
14 Public Accountant Certificate)	
15 No. PA 6623)	
)	
16 Respondent.)	

17
18 On August 16, 1994, accusation number AC-94-24 was
19 filed by Carol B. Sigmann, (hereinafter "complainant") before the
20 Board of Accountancy (hereinafter "the Board"), Department of
21 Consumer Affairs of the State of California against Marvin J.
22 Baranov (hereinafter "respondent"), holder of Public Accountant
23 Certificate No. PA 6623.

24 On or about August 29, 1994, the accusation, along with
25 the statement to respondent, excerpt of Government Code sections
26 11507.5, 11507.6, 11507.7, notice of defense, request for
27 discovery (hereinafter the accusation package), was served on

1 respondent by certified mail addressed to respondent at 15720
2 Ventura Boulevard, Suite 520, Encino, California 91436. On or
3 about August 30, 1994, an agent, on behalf of respondent, signed
4 for receipt of the accusation package.

5 Pursuant to Title 16, California Code of Regulations,
6 section 3, as holder of a public accountant certificate from the
7 Board, respondent is required to file his current mailing address
8 with the Board, and is required to immediately notify the Board
9 of any and all changes of his mailing address. Respondent's
10 mailing address of record with the Board is 15720 Ventura
11 Boulevard, Suite 520, Encino, California 91436.

12 Respondent was served with the accusation package on
13 August 29, 1994, in a manner authorized by Government Code
14 section 11505(c) and Code of Civil Procedure section 11.

15 On September 2, 1994, respondent filed a Notice of
16 Defense to the accusation, and listed his counsel of record as
17 Don D. Nelson.

18 On December 7, 1994 a Notice of Hearing was mailed to
19 respondent by regular first class mail addressed to respondent at
20 15720 Ventura Boulevard, Suite 520, Encino, California 91436.
21 The Notice of Hearing was also mailed to respondent's counsel by
22 regular first class mail addressed to Don Nelson, Esq., 699
23 Hampshire Road, Suite 217, Westlake Village, California 91361.
24 The hearing was set for April 20 and April 21, 1995.

25 On March 25, 1995, respondent signed a Withdrawal of
26 Notice of Defense, and on March 28, 1995, respondent's counsel
27 signed the Withdrawal of Notice of Defense. Respondent has

1 waived his right to a hearing on the accusation and is in
2 default. Because of respondent's waiver and pursuant to
3 Government Code section 11520(a), the Board takes action on the
4 accusation without a hearing, based upon the accusation and
5 documentary evidence on file, and makes the following findings of
6 fact and determination of issues.

8 FINDINGS OF FACT

9 1. Complainant, Carol B. Sigmann, the Executive
10 Officer of the Board of Accountancy, made and filed accusation
11 No. AC-94-24 in the above-entitled action solely in her official
12 capacity.

13
14 2. On or about August 30, 1946, respondent was issued
15 Public Accountant Certificate No. PA 6623 by the Board. The
16 certificate at all times relevant herein was in force and effect.
17 Effective on September 11, 1963, in a case entitled "In the
18 Matter of the Accusation Against Marvin J. Baranov", case No. LA
19 30, the Board determined that respondent violated Business and
20 Professions Code section 5100(d) and revoked respondent's
21 certificate, but stayed the revocation, and placed respondent on
22 probation for a period of three years, including 180 days of
23 suspension.

24
25 3. For the years 1985, 1986, 1987 and 1988,
26 respondent provided tax preparation services for J. D. Price,
27 Jr., (hereinafter "Price") and on behalf of his estate.

1 a. Price retired in June 1985. Pursuant to his
2 employee retirement benefits package, Price received
3 payments after his retirement from the State Teachers
4 Retirement System ("STRS") and the Public Employee
5 Retirement System ("PERS"). Prior to his retirement, Price
6 had made contributions to each system.

7 b. For the years 1985, 1986 and 1987, respondent
8 included the payments received by Price from STRS and PERS
9 as taxable income..

10 c. On or about April 30, 1989, Price died. Alice Cox
11 (hereinafter "COX"), his daughter, was named executrix of
12 his estate.

13 d. Respondent's inclusion of the payments from STRS
14 and PERS as taxable income to Price for 1985, 1986 and 1987
15 constituted gross negligence because the pension payments
16 were exempt from taxation under Internal Revenue Code
17 section 72(d) as Price's taxpayer contributions.

18 e. Approximately in March 1989, Cox had informed
19 respondent about the overpayment of taxes for 1985, 1986 and
20 1987. Thereafter, respondent failed to timely submit a
21 claim for a refund for overpayment as authorized pursuant to
22 Internal Revenue Code section 6511. Respondent claimed
23 additional fees were due to him for work on behalf of the
24 estate. Thereafter Cox was unable to obtain any refunds for
25 the overpayments of approximately \$4,000.00 because too much
26 time had elapsed. Respondent failed to submit a claim for
27 refund or to exercise due diligence, which constituted gross

1 negligence.

2 f. Immediately prior to March 1991, Cox repeatedly
3 requested copies of Price's 1988 tax returns and other
4 documents. Respondent did not provide them. On or about
5 March 5, 1991, Cox through her counsel submitted a written
6 request for the entire file of Price and/or of the estate.
7 Respondent refused to comply with the written request
8 because no written authorization from Cox was included.
9 Respondent's refusal and failure to provide records to Cox
10 or her counsel constituted a willful violation of Title 16,
11 California Code of Regulations, Section 68.

12
13 4. On or about February 25, 1993, pursuant to an
14 investigative hearing, respondent appeared before an
15 administrative committee of the Board. Respondent produced
16 samples of his work including a financial statement for a client,
17 "Ruzane, Inc.", for the period ending October 31, 1993, which
18 consisted of a single page income statement, a compilation report
19 which referred to a balance sheet and the related statements of
20 income and expense. According to respondent, the statement was
21 prepared on a cash basis.

22 a. Respondent's financial statement referred to the
23 accompanying balance sheet of Ruzane, Inc. and the related
24 statements of income and expense when the only statement
25 accompanying the report was an income statement of one page.

26 b. The financial statement failed to include a
27 statement of cash flows, failed to include note disclosures

1 as required by generally accepted accounting principles or
2 in the alternative failed to describe the absence of these
3 disclosures.

4 c. The financial statement failed to disclose the
5 basis of accounting as being on the cash basis.

6 d. Respondent's failures in the preparation of the
7 financial statements for Ruzane, Inc. constituted a willful
8 violation of Title 16, California Code of Regulations, Section
9 58.3, for failure to comply with professional standards as set
10 forth in the AICPA'S Statements on Standards for Accounting and
11 Review Services (SSARS) No. 1, AR § 100.05, AR § 100.21, and AR
12 § 100.20.

13
14 5. The Board's reasonable cost of investigation and
15 prosecution of this matter is \$1,804.01 to March 25, 1995.

16 17 DETERMINATION OF ISSUES

18 1. Because of the above findings of fact, cause for
19 disciplinary action against respondent exists for violating
20 provisions of the California Accountancy Act and the rules and
21 regulations adopted by the Board of Accountancy.

22 2. Cause for discipline exists pursuant to section
23 5100(c) of the Business and Professions Code by reason of
24 Findings of Fact No. 3.

25 3. Cause for discipline exists pursuant to section
26 5100(f) of the Business and Professions Code for violating Title
27 16, California Code of Regulations, Section 68 by reason of

Findings of Fact No. 3.

4. Cause for discipline exists pursuant to section 5100(f) of the Business and Professions Code for violating Title 16, California Code of Regulations, Section 58.3 by reason of Findings of Fact No. 4.

DISCIPLINARY ORDER

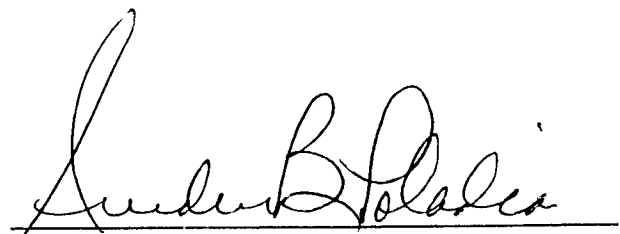
WHEREFORE, IT IS ORDERED:

Public Accountant Certificate Number PA 6623 issued to Marvin J. Baranov is hereby revoked pursuant to Determination of Issues Nos. 1 through 4, inclusive, separately and as to all of them.

Respondent shall not be deprived of making any showing by way of mitigation; however, such showing shall be made to the Board prior to the effective date of this Default Decision.

This Default Decision shall become effective on September 6, 1995.

DATED: August 7, 1995



AVEDICK POLADIAN
President
Board of Accountancy
Department of Consumer Affairs
State of California

Complainant